

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/03/99

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 13.7.1998 passed by the Police Commissioner, Ahmedabad, under Section 3(2) of the Prevention of Anti-social Activities Act (for short "PASA") and has prayed that the aforesaid order be quashed and he be released from illegal detention.

2. From the grounds of detention it seems that because of registration of one case under the Bombay Prohibition Act against the petitioner and due to the statements of two confidential witnesses the detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his activities are prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

3. This detention order has been challenged by the learned Counsel for the petitioner on the only ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. She has not challenged the subjective satisfaction of the detaining Authority that the petitioner is a bootlegger nor she could successfully challenge this subjective satisfaction for the obvious reason that from registration of a case under the Bombay Prohibition Act and statements of two confidential witnesses there was material before the detaining Authority to arrive at subjective satisfaction that the petitioner is a bootlegger within the meaning of Section 2(b) of the PASA.

4. The detention of a bootlegger can only be justified if his activities are found to be prejudicial for maintenance of public order. Learned A.G.P. contended that in view of recovery of 192 bottles of foreign liquor and 99 bottles of Beer worth Rs.34,000/- the petitioner was rightly detained under PASA and he cannot be released. This contention can hardly be accepted. Recovery of huge quantity of liquor or beer is no ground for detaining the petitioner under PASA. He was adequately booked under various sections of the Bombay Prohibition Act and it was thus a situation where the law contained in Bombay Prohibition Act was violated by the petitioner. This incident cannot be said to have

created situation prejudicial for maintenance of public order and if the law and order was violated the petitioner was suitably dealt with.

5. Now remains the statements of two confidential witnesses.

6. The first witness narrated about the incident dated 7.6.1998 at 7.00 p.m. At that time the petitioner reached with quantity of foreign liquor at the house of the witness and asked him to keep the same in his house. The witness refused whereupon the petitioner was excited. He dragged the witness in public and beat him. The witness shouted whereupon the persons from surrounding area gathered. Seeing this the petitioner became more excited and rushed towards crowd with razor due to which atmosphere of terror was created. On plain examination of this incident it seems that only the witness was beaten by the petitioner and not any member of the crowd. If the petitioner ran towards crowd showing razor it cannot be said that situation prejudicial for maintenance of public order even within the extended meaning of public order as contained in Explanation to Sub.Section 4 of Section 3 of the PASA was created.

7. The second incident dated 18.6.1998 at 2.00 p.m. also cannot be said to have created situation prejudicial for maintenance of public order. Here the witness was beaten by the petitioner suspecting that he was police informer. On the alarm of the witness crowd gathered and the petitioner rushed towards the crowd with knife. Again no injury was caused to any member of public and this incident was also hardly sufficient for creating situation prejudicial for maintenance of public order. If the activities of the petitioner were not prejudicial for maintenance of public order he could not successfully be detained under PASA. The detention order has, therefore, become illegal. It has, therefore, to be quashed.

8. In the result the petition succeeds and is allowed. The impugned order of detention dated 13.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

Date : March 03, 1999 (D. C. Srivastava, J.)

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